

U.S. District Court
North Carolina Middle District (NCMD)
CRIMINAL DOCKET FOR CASE #: 1:21-mj-00103-JEP All Defendants
Internal Use Only

Case title: USA v. DONOHOE

Date Filed: 03/17/2021

Other court case number: 21-cr-175 (TJK) District of
Columbia

Date Terminated: 03/19/2021

Assigned to: MAG/JUDGE JOI
ELIZABETH PEAKE

Defendant (1)

CHARLES DONOHOE
TERMINATED: 03/19/2021

represented by **LISA S. COSTNER**
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336-748-1885
Email: lisa@lisacostnerlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Disposition

Terminated Counts

None

**Highest Offense Level
(Terminated)**

None

Disposition

Complaints

Rule 5 Arrest

Disposition

Plaintiff

USA

represented by **ERIC L. IVERSON**
U. S. ATTORNEY'S OFFICE – MDNC

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ATTORNEY TO BE NOTICED

| Date Filed | # | Page | Docket Text |
|------------|---|------|---|
| 03/17/2021 | | 4 | Arrest (Rule 5) of CHARLES DONOHOE (Garrett, Kim) (Entered: 03/17/2021) |
| 03/17/2021 | | 5 | Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE in CR-1 WS:INITIAL APPEARANCE IN RULE 5 PROCEEDINGS as to CHARLES DONOHOE held on 3/17/2021. AUSA Eric Iverson. Defendant advised of rights and charges. Defendant confirmed financial was correct and requested court appointed counsel. Attorney Lisa Costner present and appointed. This matter is continued until 3/19/21 at 3:30 pm in WS CR-1 for a Status Hearing. Government instructed to file by Friday morning a basis for the motion for detention. Proceedings recorded. (Garrett, Kim) (Entered: 03/17/2021) |
| 03/17/2021 | 1 | 6 | SEALED FINANCIAL AFFIDAVIT by CHARLES DONOHOE. (Garrett, Kim) (Entered: 03/17/2021) |
| 03/17/2021 | 2 | 7 | ORDER appointing CJA Panel Attorney Lisa Costner for CHARLES DONOHOE. Signed by MAG/JUDGE JOI ELIZABETH PEAKE on 3/17/21. (Garrett, Kim) (Entered: 03/17/2021) |
| 03/17/2021 | 3 | 8 | ORDER SCHEDULING DETENTION HEARING/PRELIMINARY EXAMINATION as to CHARLES DONOHOE. Detention Hearing/Preliminary Examination set for 3/24/2021 03:00 PM in Winston-Salem Courtroom #1 before MAG/JUDGE JOI ELIZABETH PEAKE. Signed by MAG/JUDGE JOI ELIZABETH PEAKE on 3/17/21. (Garrett, Kim) (Entered: 03/17/2021) |

| | | | |
|------------|----------|----|--|
| 03/19/2021 | <u>4</u> | 9 | NOTICE OF ATTORNEY APPEARANCE TANNER L. KROEGER appearing for USA. (KROEGER, TANNER) (Entered: 03/19/2021) |
| 03/19/2021 | <u>5</u> | 11 | NOTICE OF ATTORNEY APPEARANCE STEPHEN THOMAS INMAN appearing for USA. (INMAN, STEPHEN) (Entered: 03/19/2021) |
| 03/19/2021 | <u>6</u> | 13 | SEALED BRIEF <i>Regarding Detention</i> by Plaintiff USA, Defendant CHARLES DONOHOE (KROEGER, TANNER) Modified on 3/19/2021 to unseal document see <u>9</u> Motion and Text Order entered 3/19/21 (Garrett, Kim). (Entered: 03/19/2021) |
| 03/19/2021 | | 23 | Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE CR-1 WS:Status Conference as to CHARLES DONOHOE held on 3/19/2021. AUSA Tanner Kroeger. Attorney Lisa Costner present with defendant. The defendant elected to waive hearings in this district. Government made an oral motion to seal <u>6</u> Seal Brief. The Court instructed to file a motion to seal and a redacted copy of Sealed Brief if to remain under seal. Defendant to be transported in custody to the District of Columbia for further proceedings. Proceedings recorded. (Garrett, Kim) (Entered: 03/19/2021) |
| 03/19/2021 | <u>7</u> | 25 | WAIVER of Rule 5(c)(3) Hearing by CHARLES DONOHOE (Garrett, Kim) (Entered: 03/19/2021) |
| 03/19/2021 | <u>8</u> | 26 | Commitment Order – Rule 5 as to CHARLES DONOHOE. Signed by MAG/JUDGE JOI ELIZABETH PEAKE on 3/19/21. (Garrett, Kim) (Entered: 03/19/2021) |
| 03/19/2021 | <u>9</u> | 27 | MOTION to Unseal Document by USA as to CHARLES DONOHOE. Response to Motion due by 4/9/2021 (KROEGER, TANNER) (Entered: 03/19/2021) |
| 03/19/2021 | | 30 | Motions Referred: RE: <u>9</u> MOTION to Unseal Document , to MAG/JUDGE JOI ELIZABETH PEAKE (Garrett, Kim) (Entered: 03/19/2021) |
| 03/19/2021 | | 31 | TEXT ORDER by MAG/JUDGE JOI ELIZABETH PEAKE on 3/19/21 granting <u>9</u> Motion to Unseal Document <u>6</u> SEALED Brief as to CHARLES DONOHOE (1). (Garrett, Kim) (Entered: 03/19/2021) |
| 03/19/2021 | | 33 | Document unsealed as to CHARLES DONOHOE <u>6</u> SEALED Brief (Garrett, Kim) (Entered: 03/19/2021) |

MIME-Version:1.0
From:ECF@ncmd.uscourts.gov
To:ecf@ncmd.uscourts.gov
Bcc:
--Case Participants: MAG/JUDGE JOI ELIZABETH PEAKE (allison_bennett@ncmd.uscourts.gov, clarke_martin@ncmd.uscourts.gov, jasmine_johnson@ncmd.uscourts.gov, judge_peake@ncmd.uscourts.gov, kevin_todd@ncmd.uscourts.gov, kimberly_garrett@ncmd.uscourts.gov, wanda_williamson@ncmd.uscourts.gov)
--Non Case Participants: Probation Office (duty@ncmp.uscourts.gov), U. S. Marshal's Office (ecf.usmsncm@usdoj.gov, jeannie.helms@usdoj.gov, jessica.williams2@usdoj.gov)
--No Notice Sent:

Message-Id:3374034@ncmd.uscourts.gov

Subject:Activity in Case 1:21-mj-00103-JEP USA v. DONOHOE Arrest - Rule 5

Content-Type: text/html

U.S. District Court

North Carolina Middle District

Notice of Electronic Filing

The following transaction was entered on 3/17/2021 at 4:36 PM EST and filed on 3/17/2021

Case Name: USA v. DONOHOE

Case Number: 1:21-mj-00103-JEP

Filer:

Document Number: No document attached

Docket Text:

Arrest (Rule 5) of CHARLES DONOHOE (Garrett, Kim)

1:21-mj-00103-JEP-1 Notice has been electronically mailed to:

1:21-mj-00103-JEP-1 Notice will not be electronically mailed to:

MIME-Version:1.0
From:ECF@ncmd.uscourts.gov
To:ecf@ncmd.uscourts.gov
Bcc:
--Case Participants: LISA S. COSTNER (denisesullivan@triad.rr.com, emily@lisacostnerlaw.com, lisa@lisacostnerlaw.com), ERIC L. IVERSON (caseview.ecf@usdoj.gov, eric.iverson@usdoj.gov, jo.vereen@usdoj.gov, usancm.ecfcriminal@usdoj.gov), MAG/JUDGE JOI ELIZABETH PEAKE (allison_bennett@ncmd.uscourts.gov, clarke_martin@ncmd.uscourts.gov, jasmine_johnson@ncmd.uscourts.gov, judge_peake@ncmd.uscourts.gov, kevin_todd@ncmd.uscourts.gov, kimberly_garrett@ncmd.uscourts.gov, wanda_williamson@ncmd.uscourts.gov)
--Non Case Participants: Probation Office (duty@ncmp.uscourts.gov)
--No Notice Sent:

Message-Id:3374161@ncmd.uscourts.gov

Subject:Activity in Case 1:21-mj-00103-JEP USA v. DONOHOE Initial Appearance - Rule 5
Content-Type: text/html

U.S. District Court

North Carolina Middle District

Notice of Electronic Filing

The following transaction was entered on 3/17/2021 at 7:09 PM EST and filed on 3/17/2021

Case Name: USA v. DONOHOE

Case Number: 1:21-mj-00103-JEP

Filer:

Document Number: No document attached

Docket Text:

Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE in CR-1 WS:INITIAL APPEARANCE IN RULE 5 PROCEEDINGS as to CHARLES DONOHOE held on 3/17/2021. AUSA Eric Iverson. Defendant advised of rights and charges. Defendant confirmed financial was correct and requested court appointed counsel. Attorney Lisa Costner present and appointed. This matter is continued until 3/19/21 at 3:30 pm in WS CR-1 for a Status Hearing. Government instructed to file by Friday morning a basis for the motion for detention. Proceedings recorded. (Garrett, Kim)

1:21-mj-00103-JEP-1 Notice has been electronically mailed to:

ERIC L. IVERSON eric.iverson@usdoj.gov, CaseView.ECF@usdoj.gov, jo.vereen@usdoj.gov, USANCM.ecfcriminal@usdoj.gov

LISA S. COSTNER lisa@lisacostnerlaw.com, denisesullivan@triad.rr.com, emily@lisacostnerlaw.com

1:21-mj-00103-JEP-1 Notice will not be electronically mailed to:

March 17, 2021
7:28 pm

Clerk, US District Court
By: kg

WT

CJA 23
(Rev. 11/11)

FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT, OR OTHER SERVICES WITHOUT PAYMENT OF FEE

IN THE UNITED STATES DISTRICT COURT COURT OF APPEALS OTHER (Specify below)

IN THE CASE OF _____

FOR

AT

LOCATION NUMBER

PERSON REPRESENTED (Show your full name)

Charles Donohoe
122 Broad St
Kernersville, NC 27284

CHARGE/OFFENSE (describe if applicable & check box →)

DOB: 2-10-82

Felony

SSN: 143-96-2500 336-306-2329

Misdemeanor

- 1 Defendant - Adult
- 2 Defendant - Juvenile
- 3 Appellant
- 4 Probation Violator
- 5 Supervised Release Violator
- 6 Habeas Petitioner
- 7 2255 Petitioner
- 8 Material Witness
- 9 Other (Specify) _____

DOCKET NUMBERS

Magistrate Judge

District Court

Court of Appeals

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

| | |
|--|--|
| EMPLOY- MENT | Are you now employed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Self-Employed |
| | Name and address of employer: Brewer's Kettle, Kernersville, NC (4 mos) |
| | IF YES, how much do you earn per month? \$ 1,200 |
| | IF NO, give month and year of last employment? _____ How much did you earn per month? \$ _____ |
| INCOME & ASSETS | If married, is your spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | IF YES, how much does your spouse earn per month? \$ _____ |
| Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| OTHER INCOME | IF YES, give the amount received and identify the sources \$ RECEIVED 200/month SOURCES VA Disability |
| CASH | Do you have any cash on hand or money in savings or checking accounts? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No IF YES, total amount? \$ 1,000 |
| PROP- ERTY | Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No IF YES, give value and description for each \$ VALUE DESCRIPTION 2013 F150 truck |

| | | | | |
|---------------------------|--|--|---|--|
| OBLIGATIONS & DEBTS | DEPENDENTS | MARITAL STATUS <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated or Divorced | Total No. of Dependents | List persons you actually support and your relationship to them 31240 |
| | | | | |
| | DEBTS & MONTHLY BILLS (Rent, utilities, loans, charge accounts, etc.) | DESCRIPTION Child support rent groceries Utilities power | TOTAL DEBT \$ 100 \$ 900 \$ 400 \$ 70 | MONTHLY PAYMENT \$ 150 |

I certify under penalty of perjury that the foregoing is true and correct.

151 By affirmation in open court
SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)

3-17-2021
Date

JP 3/17/2021

FILED
in the Middle District of
North Carolina

March 17, 2021
7:26 pm

Clerk, US District Court
By: kg

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
)
v.) 1:21MJ103
)
)
CHARLES DONOHOE)
)

ORDER

This matter comes before the Court for the appointment of counsel to represent Defendant in this action. The Court has reviewed Defendant's Financial Affidavit and concludes that Defendant is entitled to appointment of counsel at the Government's expense.

IT IS THEREFORE ORDERED that CJA Panel Attorney Lisa Costner is appointed to represent Defendant in this action.

This, the 17th day of March, 2021.



United States Magistrate Judge

March 17, 2021
8:30 pm

Clerk, US District Court
By: kg

UNITED STATES DISTRICT COURT
for the
Middle District of North Carolina

United States of America)
v.) Case No. 1:21MJ103
CHARLES DONOHOE)
Defendant)

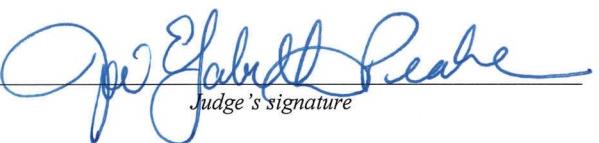
ORDER SCHEDULING A DETENTION HEARING

A detention hearing in this case is scheduled as follows:

| | |
|---|------------------------------------|
| Place: U.S. District Court 251 N. Main Street Winston-Salem, NC 27101 | Courtroom No.: 1 |
| | Date and Time: 3/24/2021 3:00 p.m. |

IT IS ORDERED: Pending the hearing, the defendant is to be detained in the custody of the United States marshal or any other authorized officer. The custodian must bring the defendant to the hearing at the time, date, and place set forth above.

Date: 03/17/2021



Joi Elizabeth Peake
Judge's signature

Joi Elizabeth Peake, United States Magistrate Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
)
v.) 1:21mj103
)
CHARLES DONOHOE)

NOTICE OF APPEARANCE

NOW COMES United States of America, by and through its attorney, Sandra J. Hairston, Acting United States Attorney for the Middle District of North Carolina, and gives notice to this Honorable Court of the appearance of Tanner Kroeger, Assistant United States Attorney, as attorney for the United States in the above-captioned matter. He is to be served with any electronic or manual filing in this case.

This the 19th day of March, 2021.

Respectfully submitted,

SANDRA J. HAIRSTON
ACTING UNITED STATES ATTORNEY

S/ TANNER L. KROEGER
Assistant United States Attorney
NYSB No. 5297015
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401
Phone: 336/333-5351

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2021, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and served via that system on the following CM/ECF participants:

Lisa Costner, Esq.

Respectfully submitted,

S/ TANNER L. KROEGER

Assistant United States Attorney
NYSB No. 5297015
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401
Phone: 336/333-5351

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
)
v.) 1:21mj103
)
CHARLES DONOHOE)

NOTICE OF APPEARANCE

NOW COMES United States of America, by and through its attorney, Sandra J. Hairston, Acting United States Attorney for the Middle District of North Carolina, and gives notice to this Honorable Court of the appearance of Stephen Inman, Assistant United States Attorney, as attorney for the United States in the above-captioned matter. He is to be served with any electronic or manual filing in this case.

This the 19th day of March, 2021.

Respectfully submitted,

SANDRA J. HAIRSTON
ACTING UNITED STATES ATTORNEY

S/ STEPHEN T. INMAN
Deputy Chief, Criminal Division
Assistant United States Attorney
NCSB No. 26913
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401
Phone: 336/333-5351

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2021, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and served via that system on the following CM/ECF participants:

Lisa Costner, Esq.

Respectfully submitted,

S/ STEPHEN T. INMAN

Deputy Chief, Criminal Division
Assistant United States Attorney
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

United States of America)
)
)
v.) 1:21mj103
)
Charles Donohoe) **FILED UNDER SEAL**

MEMORANDUM IN SUPPORT OF PRE-TRIAL DETENTION

NOW COMES the United States of America, by and through its attorney, Sandra J. Hairston, Acting United States Attorney for the Middle District of North Carolina, and submits the attached memorandum in support of pre-trial detention in the above-captioned case. The defendant made his initial appearance before this Court on March 17, 2021. The government moved for detention at that time, and, in response, the Court asked the government to file authority supporting the basis to make the motion. In short, the United States charged the defendant with a violation of Title 18, United States Code, Section 1361 – destruction of government property. That offense serves as a basis to bring the motion as both as an offense listed under Title 18, United States Code, Section 2332b(g)(5)(B) as well as a crime of violence under the Bail Reform Act. See 18 U.S.C. § 3142(f)(1)(A). In any event, the defendant's conduct shows he is a serious risk to obstruct justice, and therefore, a motion

for detention is appropriate. See 18 U.S.C. § 3142(f)(2)(B). The government asks the Court to proceed with a detention hearing.

PROCEDURAL HISTORY

On March 10, 2021, a grand jury sitting in the District of Columbia charged Charles Donohoe and three others in a six-count indictment. Specifically, in Count One, the indictment charges Donohoe with a violation of Title 18, United States Code, Section 371; in Count Two with a violation of Title 18, United States Code, Sections 1512(c)(2) and 2; in Count Three with a violation of Title 18, United States Code, Sections 231(a)(3) and 2; in Count Four with a violation of Title 18, United States Code, Sections 1361¹ and 2; in Count Five with a violation of Title 18, United States Code, Section 1752(a)(1); and in Count Six, with a violation of Title 18, United States Code, Section 1752(a)(2).

¹ Section 1361 contains both misdemeanor and felony penalty provisions. When “the damage or attempted damage to such property exceeds the sum of \$1,000,” then the statute provides for “imprisonment for not more than ten years.” 18 U.S.C. § 1361. If the damage is \$1,000, the term of imprisonment is limited to “not more than one year.” *Id.* The grand jury alleged, among other things, that Donohoe “willfully injure[d] and commit[ed] depredation against the property of the United States” in that Donohoe “aided and abetted others known and unknown to forcibly enter the Capitol and thereby caused damage to the building in an amount more than \$1,000.” Superseding Indictment (D.D.C. No. 21-CR-175-4 (Jan. 8, 2021)) at ¶ 74. As a result, he faces imprisonment on that charge, Count Four, of ten years.

The defendant was arrested on March 17, 2021, in the Middle District of North Carolina. He made his initial appearance in this district later that day. The government moved for detention, and the Court continued that hearing until March 24, 2021. During the initial appearance, the Court asked the government to provide supplemental authority as to the basis for the motion for detention.

FACTUAL SUMMARY

The government incorporates by reference the facts as alleged in the superseding indictment.² *See* D.D.C. No. 21-CR-175-4 (Mar. 10, 2021).

ARGUMENT

The government's motion for detention is properly before the Court. First, the offense charged in Count Four is enumerated under Title 18, United States Code, Section 2332b(g)(5)(B). In light of the applicable penalties, Count Four allows the government to move for detention. *See* 18 U.S.C. § 3142(f)(1)(A). Second, the offense charged in Count Four is a crime of violence under the Bail Reform Act, subjecting the defendant to a motion for detention. *See id.* Third, the defendant's conduct, as alleged in Count One and Count Two, demonstrates that the defendant poses a serious risk of obstructing

² Because that superseding indictment remains under seal and the government refers to it at numerous times in this memorandum, the government has filed this memorandum under seal, as well.

justice if he were to be released. That conduct allows the government to move for detention. *See* 18 U.S.C. § 3142(f)(2)(B). To be sure, the Court need only agree with the government on one of the three bases for the motion. If the Court does, a detention hearing is in order.

1. Count Four creates a rebuttable presumption of detention.

The Bail Reform Act allows the government to move for detention when the case involves “an offense listed under Title 18, United States Code, Section 2332b(g)(5)(B)” or “a crime of violence.” 18 U.S.C. § 3142(f)(1)(A). Indeed, in either case, the statute creates a rebuttable presumption in favor of detention.

Id.

a. An offense listed under § 2332b(g)(5)(B).

The Bail Reform Act allows for a motion for detention when there is probable cause to believe a defendant committed an offense listed in Title 18, United States Code, Section 2332b(g)(5)(B) for which a maximum term of imprisonment of ten years or more is prescribed. *See* 18 U.S.C. § 3142(f)(1)(A). In that scenario, the law provides a rebuttable presumption in favor of detention. *See* 18 U.S.C. § 3142(e)(3)(C).

Count Four charges the defendant with destruction of government property and aiding and abetting the same. The indictment further states that the damage to property at the Capitol was in an amount greater than \$1,000.

Pursuant to Title 18, United States Code, Section 1361, when damage to government property exceeds \$1,000, the penalty includes imprisonment of not more than ten years.

Section 2332b(g)(5)(B) enumerates § 1361 as a listed offense. Here, the defendant could receive a ten-year term of imprisonment for that count. Accordingly, a motion for detention is proper, and the defendant faces a rebuttable presumption that he should be detained.³

b. A crime of violence under the Bail Reform Act.

Under the Bail Reform Act, a crime of violence is, in relevant part, “an offense that has an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 3156(a)(4)(A). A defendant may commit or aid and abet the commission of a crime of violence. *See, e.g., United States v. Richardson*, 948 F.3d 733, 741-42 (6th Cir. 2020) (finding “no distinction” between aiding and abetting and committing the substantive crime, and concluding that a defendant’s conviction for aiding and abetting Hobbs Act robbery “satisfies the elements clause”); *Steiner v. United States*, 940 F.3d 1282, 1293 (11th Cir. 2019).

³ Numerous cases from the district where these charges are pending against Donohoe have held the same. *See, e.g., United States v. Powell*, Case No. 21-mj-197 (D.D.C. Feb. 11, 2021); *see also United States v. Watkins*, Case No. 21-cr-28-3 (D.D.C. Feb. 26, 2021); *United States v. Bisgnano*, Case No. 21-CR-36 (D.D.C. Feb. 26, 2021).

A defendant violates § 1361 if he “commits any depredation against any property of the United States.” Historically, “depredation” is “the act or an instance of robbing, plundering, or laying waste.” *United States v. Jenkins*, 554 F.2d 783, 8786 (6th Cir. 1977). The Sixth Circuit adapted its definition from *Deal v. United States*, 274 U.S. 277 (1927), which interpreted the meaning of the word in a post-office regulation. In doing so, the Supreme Court defined “depredation” to mean “the act of plundering; a robbing; a pillaging.” *Id.* at 283 (quoting Century Dictionary). Plundering, robbing, or pillaging – that is, in a word, depredation – necessarily involves a defendant’s use of force. See *United States v. Shi*, 525 F.3d 709, 721 (9th Cir. 2008) (discussing piracy under 18 U.S.C. § 2280 by reference to *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 161 (1820), which defined piracy as “robbery, or forcible depredations upon the sea”); see also *United States v. Dire*, 680 F. 3d 446, 452-59 (4th Cir. 2012) (discussing the history of piracy-as-depredation).

The government maintains that a violation of § 1361 is a crime of violence for the purposes of detention but acknowledges that the Fourth Circuit has granted a certificate of appealability on a related question. See *United States v. Melaku*, 799 F. App’x 203 (4th Cir. 2020) (unpublished) (allowing review of whether § 1361 is a “crime of violence” predicate supporting a

conviction under 18 U.S.C. § 924(c)). To be sure, in the case at bar, the Court need not reach this question if it finds another viable basis for the motion.

2. The defendant's obstructionist conduct necessitates a detention hearing.

Where a defendant poses “a serious risk that [he] will obstruct or attempt to obstruct justice,” the Court should conduct a detention hearing upon the government’s motion. 18 U.S.C. § 3142(f)(2)(B). Here, as alleged in the indictment, Donohoe instructed his co-conspirators to communicate by means of encrypted messaging to avoid law enforcement two days before the attack on the Capital. *See* Superseding Indictment at ¶ 39. He also destroyed prior communications for the same purpose. *Id.* Donohoe engaged in that conduct explicitly out of fear that he might be charged criminally. *Id.* at ¶ 40.

Despite the fear that he might be charged, the defendant nevertheless participated in the attack on the Capital on January 6, 2021. That conduct was, in its own right, obstructionist in nature – the defendant and others overran the United States Capitol in an attempt to interfere with the election of a new president. After the fact, the defendant celebrated “[w]e stormed the capitol unarmed [...] And we took it over unarmed.” *Id.* at ¶ 24.

The defendant’s conduct demonstrates he poses a serious risk to obstruct or attempt to obstruct justice. *See United States v. Chrestman*, ___F. Supp. 3d___, No. 21-MJ-218, 2021 WL 765662, at *15 (D.D.C., Feb. 26, 2021)

(agreeing with a detention order where defendant participated in the January 6, 2021, attack on the Capital and where the government moved for detention, in part, pursuant to §3142(f)(2)(B)). As such, the Court should conduct a detention hearing.

CONCLUSION

For the reasons stated above, the government moves the Court to hold a detention hearing in this matter.⁴

This the 19th day of March, 2021.

Respectfully submitted,

SANDRA J. HAIRSTON
ACTING UNITED STATES ATTORNEY

S/ STEPHEN T. INMAN

Deputy Chief, Criminal Division
Assistant United States Attorney
NCSB No. 26913

S/ TANNER L. KROEGER

Assistant United States Attorney
NYSB No. 5297015
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401
Phone: 336/333-5351

⁴ The government understood the Court's request for briefing at this juncture to be a request for the legal basis supporting a motion by the government for detention. As to the substance of that motion—*i.e.*, whether the Court should grant it—the government will further supplement this briefing at a later date as necessary to provide the Court with argument on the factors listed in § 3142(g).

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2021, the foregoing was electronically filed under seal with the Clerk of the Court using the CM/ECF system, and served via that system on the following CM/ECF participants:

Lisa Costner, Esq.

Respectfully submitted,

S/ TANNER L. KROEGER

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Greensboro, NC 27401
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MIME-Version:1.0
From:ECF@ncmd.uscourts.gov
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--Case Participants: STEPHEN THOMAS INMAN (caseview.ecf@usdoj.gov, shaquitta.johnson@usdoj.gov, stephen.inman@usdoj.gov, usancm.ecfcriminal@usdoj.gov), TANNER L. KROEGER (caseview.ecf@usdoj.gov, laurie.lochner@usdoj.gov, shaquitta.johnson@usdoj.gov, tanner.kroeger@usdoj.gov, usancm.ecfcriminal@usdoj.gov), LISA S. COSTNER (denisesullivan@triad.rr.com, emily@lisacostnerlaw.com, lisa@lisacostnerlaw.com), ERIC L. IVERSON (caseview.ecf@usdoj.gov, eric.iverson@usdoj.gov, jo.vereen@usdoj.gov, usancm.ecfcriminal@usdoj.gov), MAG/JUDGE JOI ELIZABETH PEAKE (allison_bennett@ncmd.uscourts.gov, clarke_martin@ncmd.uscourts.gov, jasmine_johnson@ncmd.uscourts.gov, judge_peake@ncmd.uscourts.gov, kevin_todd@ncmd.uscourts.gov, kimberly_garrett@ncmd.uscourts.gov, wanda_williamson@ncmd.uscourts.gov)
--Non Case Participants: Joshua Stauffer (joshua_stauffer@ncmp.uscourts.gov)
--No Notice Sent:

Message-Id:3375747@ncmd.uscourts.gov
Subject:Activity in Case 1:21-mj-00103-JEP USA v. DONOHOE Status Conference
Content-Type:text/html

U.S. District Court

North Carolina Middle District

Notice of Electronic Filing

The following transaction was entered on 3/19/2021 at 4:22 PM EST and filed on 3/19/2021

Case Name: USA v. DONOHOE

Case Number: 1:21-mj-00103-JEP

Filer:

Document Number: No document attached

Docket Text:

Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE CR-1
WS>Status Conference as to CHARLES DONOHOE held on 3/19/2021. AUSA Tanner Kroeger.
Attorney Lisa Costner present with defendant. The defendant elected to waive hearings in
this district. Government made an oral motion to seal [6] Seal Brief. The Court instructed to
file a motion to seal and a redacted copy of Sealed Brief if to remain under seal. Defendant to
be transported in custody to the District of Columbia for further proceedings. Proceedings
recorded. (Garrett, Kim)

1:21-mj-00103-JEP-1 Notice has been electronically mailed to:

ERIC L. IVERSON eric.iverson@usdoj.gov, CaseView.ECF@usdoj.gov,
jo.vereen@usdoj.gov, USANCM.ecfcriminal@usdoj.gov

LISA S. COSTNER lisa@lisacostnerlaw.com, denisesullivan@triad.rr.com,
emily@lisacostnerlaw.com

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Shaquitta.Johnson@usdoj.gov, USANCM.ecfcriminal@usdoj.gov

TANNER L. KROEGER tanner.kroeger@usdoj.gov, CaseView.ECF@usdoj.gov, laurie.lochner@usdoj.gov, shaquitta.johnson@usdoj.gov, usancm.ecfcriminal@usdoj.gov

1:21-mj-00103-JEP-1 Notice will not be electronically mailed to:

UNITED STATES DISTRICT COURT

for the

Middle District of North Carolina

United States of America)
 v.) Case No. 1:21MJ103
)
 CHARLES DONOHOE) Charging District's Case No. 21CR175
 _____)
 Defendant)

WAIVER OF RULE 5 & 5.1 HEARINGS
(Complaint or Indictment)

I understand that I have been charged in another district, the (*name of other court*) United States District Court
 for the District of Columbia .

I have been informed of the charges and of my rights to:

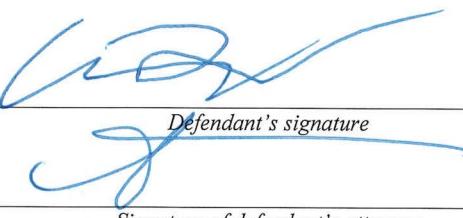
- (1) retain counsel or request the assignment of counsel if I am unable to retain counsel;
- (2) an identity hearing to determine whether I am the person named in the charges;
- (3) production of the warrant, a certified copy of the warrant, or a reliable electronic copy of either;
- (4) a preliminary hearing to determine whether there is probable cause to believe that an offense has been committed, to be held within 14 days of my first appearance if I am in custody and 21 days otherwise, unless I have been indicted beforehand.
- (5) a hearing on any motion by the government for detention;
- (6) request a transfer of the proceedings to this district under Fed. R. Crim. P. 20, to plead guilty.

I agree to waive my right(s) to:

- an identity hearing and production of the warrant.
 a preliminary hearing.
 a detention hearing.
 an identity hearing, production of the judgment, warrant, and warrant application, and any preliminary or detention hearing to which I may be entitled in this district. I request that my preliminary hearing and/or detention hearing be held in the prosecuting district, at a time set by that court.

I consent to the issuance of an order requiring my appearance in the prosecuting district where the charges are pending against me.

Date: 03/19/2021



CD
Defendant's signature

J
Signature of defendant's attorney



Lisa Costner

Printed name of defendant's attorney

March 19, 2021
4:25 pm

Clerk, US District Court
By: kg

UNITED STATES DISTRICT COURT
for the
Middle District of North Carolina

United States of America)
v.)
) Case No. 1:21MJ103
CHARLES DONOHOE _____)
Defendant) Charging District's
) Case No. 21CR175 _____

COMMITMENT TO ANOTHER DISTRICT

The defendant has been ordered to appear in the _____ District of Columbia _____,
(if applicable) _____ division. The defendant may need an interpreter for this language:
_____.

The defendant: will retain an attorney.
 is requesting court-appointed counsel.

The defendant remains in custody after the initial appearance.

IT IS ORDERED: The United States marshal must transport the defendant, together with a copy of this order, to the charging district and deliver the defendant to the United States marshal for that district, or to another officer authorized to receive the defendant. The marshal or officer in the charging district should immediately notify the United States attorney and the clerk of court for that district of the defendant's arrival so that further proceedings may be promptly scheduled. The clerk of this district must promptly transmit the papers and any bail to the charging district.

Date: 03/19/2021



Joi Elizabeth Peake
Judge's signature

Joi Elizabeth Peake, United States Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

United States of America)
)
)
v.) 1:21mj103
)
)
Charles Donohoe)

MOTION TO UNSEAL

NOW COMES United States of America, by and through its attorney, Sandra J. Hairston, Acting United States Attorney for the Middle District of North Carolina, and moves to unseal its memorandum in support of pre-trial detention. See Dkt. 6. The government filed that document under seal because it referenced factual allegations made in the superseding indictment. At the time of the filing, the superseding indictment was sealed by the United States District Court for the District of Columbia. That court has since unsealed the

charging document. Accordingly, the government asks this Court to unseal its memorandum in support of pre-trial detention filed at Dkt. 6 in the above-captioned case.

This the 19th day of March, 2021.

Respectfully submitted,

SANDRA J. HAIRSTON
ACTING UNITED STATES ATTORNEY

S/ TANNER L. KROEGER
Assistant United States Attorney
NYSB No. 5297015
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401
Phone: 336/333-5351

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2021, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and served via that system on the following CM/ECF participants:

Lisa Costner, Esq.

Respectfully submitted,

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Assistant United States Attorney

NYSB No. 5297015

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Greensboro, NC 27401

Phone: 336/333-5351

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--Non Case Participants: Joshua Stauffer (joshua_stauffer@ncmp.uscourts.gov)
--No Notice Sent:

Message-Id:3375833@ncmd.uscourts.gov
Subject:Activity in Case 1:21-mj-00103-JEP USA v. DONOHOE Motions Referred
Content-Type:text/html

U.S. District Court

North Carolina Middle District

Notice of Electronic Filing

The following transaction was entered on 3/19/2021 at 5:09 PM EST and filed on 3/19/2021

Case Name: USA v. DONOHOE

Case Number: 1:21-mj-00103-JEP

Filer:

Document Number: No document attached

Docket Text:

Motions Referred: RE: [9] MOTION to Unseal Document , to MAG/JUDGE JOI ELIZABETH PEAKE (Garrett, Kim)

1:21-mj-00103-JEP-1 Notice has been electronically mailed to:

ERIC L. IVERSON eric.iverson@usdoj.gov, CaseView.ECF@usdoj.gov, jo.vereen@usdoj.gov, USANCM.ecfcriminal@usdoj.gov

LISA S. COSTNER lisa@lisacostnerlaw.com, denisesullivan@triad.rr.com, emily@lisacostnerlaw.com

STEPHEN THOMAS INMAN stephen.inman@usdoj.gov, CaseView.ECF@usdoj.gov, Shaquitta.Johnson@usdoj.gov, USANCM.ecfcriminal@usdoj.gov

TANNER L. KROEGER tanner.kroeger@usdoj.gov, CaseView.ECF@usdoj.gov, laurie.lochner@usdoj.gov, shaquitta.johnson@usdoj.gov, usancm.ecfcriminal@usdoj.gov

1:21-mj-00103-JEP-1 Notice will not be electronically mailed to:

MIME-Version:1.0
From:ECF@ncmd.uscourts.gov
To:ecf@ncmd.uscourts.gov
Bcc:
--Case Participants: LISA S. COSTNER (denisesullivan@triad.rr.com, emily@lisacostnerlaw.com, lisa@lisacostnerlaw.com), STEPHEN THOMAS INMAN (caseview.ecf@usdoj.gov, shaquitta.johnson@usdoj.gov, stephen.inman@usdoj.gov, usancm.ecfcriminal@usdoj.gov), ERIC L. IVERSON (caseview.ecf@usdoj.gov, eric.iverson@usdoj.gov, jo.vereen@usdoj.gov, usancm.ecfcriminal@usdoj.gov), TANNER L. KROEGER (caseview.ecf@usdoj.gov, laurie.lochner@usdoj.gov, shaquitta.johnson@usdoj.gov, tanner.kroeger@usdoj.gov, usancm.ecfcriminal@usdoj.gov), MAG/JUDGE JOI ELIZABETH PEAKE (allison_bennett@ncmd.uscourts.gov, clarke_martin@ncmd.uscourts.gov, jasmine_johnson@ncmd.uscourts.gov, judge_peake@ncmd.uscourts.gov, kevin_todd@ncmd.uscourts.gov, kimberly_garrett@ncmd.uscourts.gov, wanda_williamson@ncmd.uscourts.gov)
--Non Case Participants: Joshua Stauffer (joshua_stauffer@ncmp.uscourts.gov)
--No Notice Sent:

Message-Id:3375846@ncmd.uscourts.gov
Subject:Activity in Case 1:21-mj-00103-JEP USA v. DONOHOE Order on Motion to Unseal Document
Content-Type: text/html

U.S. District Court

North Carolina Middle District

Notice of Electronic Filing

The following transaction was entered on 3/19/2021 at 5:16 PM EST and filed on 3/19/2021

Case Name: USA v. DONOHOE

Case Number: 1:21-mj-00103-JEP

Filer:

Document Number: No document attached

Docket Text:

TEXT ORDER by MAG/JUDGE JOI ELIZABETH PEAKE on 3/19/21 granting [9] Motion to Unseal Document [6] SEALED Brief as to CHARLES DONOHOE (1). (Garrett, Kim)

1:21-mj-00103-JEP-1 Notice has been electronically mailed to:

ERIC L. IVERSON eric.iverson@usdoj.gov, CaseView.ECF@usdoj.gov, jo.vereen@usdoj.gov, USANCM.ecfcriminal@usdoj.gov

LISA S. COSTNER lisa@lisacostnerlaw.com, denisesullivan@triad.rr.com, emily@lisacostnerlaw.com

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--Non Case Participants: Joshua Stauffer (joshua_stauffer@ncmp.uscourts.gov)
--No Notice Sent:

Message-Id:3375848@ncmd.uscourts.gov
Subject:Activity in Case 1:21-mj-00103-JEP USA v. DONOHOE Document Unsealed
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U.S. District Court

North Carolina Middle District

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Case Name: USA v. DONOHOE

Case Number: 1:21-mj-00103-JEP

Filer:

Document Number: No document attached

Docket Text:

Document unsealed as to CHARLES DONOHOE [6] SEALED Brief (Garrett, Kim)

1:21-mj-00103-JEP-1 Notice has been electronically mailed to:

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